Judge: Marc L. Barreca
Chapter: Chapter 7
Hearing Date: ex parte

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ADAM GROSSMAN, Debtor.	Case No. 10-19817 EX PARTE MOTION BY TRUSTEE FOR ORDER TO SHOW CAUSE RE: CIVIL CONTEMPT AND SANCTIONS AGAINST KEY WEST FINANCIAL AND MEMORANDUM OF POINTS AND AUTHORITIES

Ronald Brown the Chapter 7 Trustee in the above-referenced case, by and through his undersigned counsel, hereby moves the Court for an order to show cause why Key West Financial should not be held in civil contempt for failure to obey the Court's Order Requiring Production of Documents by Keywest financial, LLC In support of this Motion the movant states as set forth below.

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

This motion is made pursuant to 11 U.S.C. §105(a), and Rules 9014 and 9016 (as it incorporated FRCP 45(e)) and 9020 of the Federal Rules of Bankruptcy Procedure.

This Motion is supported by the Memorandum and the Declaration of Denice Moewes and the exhibits attached thereto.

A. FACTUAL BACKGROUND

1. The debtor filed a voluntary chapter 11 bankruptcy petition on June 25, 2010 which was assigned case number 10-17334. The debtor did not file schedules and accordingly the case was dismissed on July 22, 2010 (docket #24).

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2. The debtor filed a voluntary chapter 11 bankruptcy petition on July 27, 2010 which was assigned case number 10-18671. The debtor did not meet the minimal filing requirements and this case too was dismissed, on August 10, 2010 (docket #24).

3. The debtor filed this current bankruptcy proceeding as a voluntary chapter 11 bankruptcy petition on August 19, 2010 ("Current Bankruptcy"). Because of the two prior dismissed bankruptcy cases the automatic stay was not in effect in relation to this case.

4. As of the Current Bankruptcy Petition Date the debtor was the defendant in a divorce proceeding pending in King County Superior Court.

The Decree of Dissolution was entered on December 4, 2010. Moewes Declaration, Exhibit "2". Pursuant to Decree of Dissolution that debtor was awarded the following property as his separate property:

PROPERTY TO BE AWARDED TO THE HUSBAND

The Husband is awarded as his separate property, free and clear of any right, title or claim of the Wife, the following property, and the Wife hereby quit claims and conveys all of said property to the Husband. This Decree, when executed, shall serve as a document of conveyance from the Wife to the Husband of the following property:

3.4.1 All furniture, furnishings, clothing, personal items and personal property of any description presently in his possession.

3.4.2 All bank accounts, savings accounts and credit union accounts in his name only.

3.4.3 All life insurance policies insuring his life, for which the Wife is hereby divested of any interest as beneficiary.

3.4.4 The following automobile: 2005 Chevrolet Malibu. The Husband shall become solely obligated for all payments due or which may become due for the use, operation, maintenance and financing thereof, and shall hold the Wife harmless thereon.

3.4.5 Any property acquired by the Husband prior to marriage or subsequent to the date of the parties' separation unless otherwise specifically awarded to the Wife herein.

3.4.6 All right, title and interest in and to the business known as Terrington Davies LLC, Terrington Davies Capital Management LLC, Tenington Davies Tanager Fund LP and Ptarmigan Fund and all assets thereto, including but not limited to bank accounts, accounts receivables, work in progress. The Husband shall hold the Wife harmless and indemnify her from any debts associated with these businesses.

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The same day the decree was entered the debtor, without court approval, transferred all property awarded to him to a company named Keywest Financial, LLC for no consideration. Moewes Declaration, Exhibit "3"

The trustee filed an Application for a 2004 Order Requiring Production of Documents from Keywest Financial, LLC. (docket #131). The motion had attached as an exhibit a letter from Keywest representative Sharon McKinley.

Pursuant to Court order dated March 29, 2011 Keywest Financial, LLC was ordered to produce documentation to the Trustee regarding this transaction. Docket #133.

The Motion , order and subpoena were served on Keywest Financial on March 30, 2011. Moewes Declaration, Exhibit "3"

The order required Keywest to produce documentation to the Trustee no later than April 13, 2011. To date no documents have been produced to the trustee.

WHEREFORE, the Chapter 7 Trustee requests that the Court enter an order providing that Sharon McKinley and/or another representative of Keywest Financial shall appear before the Court at a hearing on October 7, 2011 at 9:30 a.m. to show cause, if there be any, why they should not be held in civil contempt for failing to comply with the 2004 Order and subpoena and further providing:

a. That Keywest Financial, LLC., may purge themselves of their contempt by complying with the 2004 order as follows: 1) producing all requested documents to Wood & Jones, P.S. on or before 5 p.m. on Friday, September 30, 2011; and 2) by paying the sum of $750.00 to the trustee for legal fees incurred to force compliance with the 2004 Order.
b. For such further and other relief as this Court deems appropriate.

MEMORANDUM

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A. The Bankruptcy Court's Contempt Authority.

Civil contempt is a refusal to do an act the court has ordered for the benefit of a party. *Bingman v. Ward*, 100 F.3d 653, 655 (9th Cir. 1996), *cert. denied*, 117 S. Ct. 1473 (1997). The Ninth Circuit has made it clear that bankruptcy courts are imbued with civil contempt powers which gives them the ability to sanction parties where appropriate. *Caldwell v. Unified Capital Corp*., (*In re Rainbow Magazine, Inc.*), 77 F.3d 278, 284-85 (9th Cir. 1996). In the present case the debtor's principal and accountant are in contempt as a result of their failure to produce any documents to the Trustee, despite the existence of a 2004 Order which specifically set forth what documents were to be produced.

B. Elements of Proof.

In order to prevail on his motion for contempt on the basis of civil contempt the Trustee "has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." In re Bennett, 298 F.3d 1059, 1069 (9th Cir 2002) quoting *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999).

In the present case the Court order required only one action from Keywest Financial - the production of documents by a certain date and time. The 2004 Order is clear about the date and time of production of documents. Keywest Financial, LLC has failed to comply with the 2004 Order.

C. Remedy Requested.

Once the Court concludes that Keywest Financial, LLC has committed civil contempt, it must determine an appropriate remedy. Civil contempt sanctions can serve two purposes: "to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *Whittaker Corp. v. Execuair Corp*., 953 F.2d 510, 517 (9th Cir. 1992).

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In the present case the Trustee seeks compliance with the 2004 Order as well as $750 for preparing this various motion and order compelling compliance with the 2004 Order.

The Trustee requests that this Court grant the relief set forth above.

Dated this 16th day of September, 2011.

WOOD & JONES, P.S.
s/ Denice Moewes
Denice Moewes, WSB #19464
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Ronald G. Brown

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